

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**DAVID LEE MASSINGILL,**

**Plaintiff,**

**v.**

**1:15-cv-2978-WSD**

**WELLSTAR HEALTH SYSTEM,  
INC., DAVID ALLISON, KRISTEN  
BETTS, and JULIA RICE-MOORE**

**Defendants.**

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**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge Janet F. King’s Final Report and Recommendation [10] (“R&R”), recommending this action be dismissed without prejudice.

**I. BACKGROUND**

August 24, 2015, Plaintiff David Lee Massingill (“Plaintiff”) filed an application to proceed *in forma pauperis* [1] (“Application”). On August 26, 2015, the Magistrate Judge granted Plaintiff’s Application, and mailed Plaintiff the forms required to be submitted before the complaint can be served. The Magistrate Judge ordered Plaintiff, within twenty days, to complete and return the forms. Plaintiff was advised that failure to return the forms in a timely manner could result in

dismissal of the complaint. ([2]). Plaintiff failed to return the forms within the time period allowed.

On September 23, 2015, the Magistrate Judge ordered Plaintiff to “show cause in writing why he has not returned the forms as ordered, and return the forms to the Clerk, within fourteen (14) days of the date of this order.”

(September 23, 2015, Order [6] (“Show Cause Order”) at 1). The Magistrate Judge advised Plaintiff that failure to respond to the Show Cause Order and to return the service forms, as ordered, “will result in a report and recommendation to the District Court to dismiss the complaint in this action.” (*Id.* at 2). Plaintiff failed to respond to the Show Cause Order or to return the service forms.

On October 28, 2015, the Magistrate Judge issued her R&R. In it, she recommends the Court dismiss this action for Plaintiff’s failure to comply with the Show Cause Order and his failure to return the forms required to serve the complaint. Plaintiff did not file any objections to the R&R, and has not otherwise taken any action in this matter.

## **II. DISCUSSION**

### **A. Legal Standard**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate

judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). No party objects to the R&R, and the Court thus conducts a plain error review of the record. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

B. Analysis

Under Local Rule 41.3(A)(2), “[t]he court may, with or without notice to the parties, dismiss a civil case for want of prosecution if: . . . [a] plaintiff . . . shall, after notice, . . . fail or refuse to obey a lawful order of the court in the case.” L.R. 41.3(A)(2), NDGa.

Plaintiff failed to comply with the Show Cause Order after being advised that failure to comply would result in a recommendation that the Court dismiss this action. The Magistrate Judge recommends this action be dismissed for Plaintiff's failure to comply with the Court's orders. The Court finds no plain error in these findings and recommendation. Slay, 714 F.2d at 1095. Accordingly, this action is dismissed pursuant to Local Rule 41.3(A)(2).

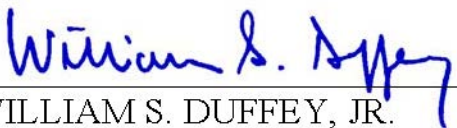
**III. CONCLUSION**

For the foregoing reasons,

**IT IS HEREBY ORDERED** that Magistrate Judge Janet F. King's Final Report and Recommendation [10] is **ADOPTED**.

**IT IS FURTHER ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE** pursuant to Local Rule 41.3(A)(2) for failure to comply with a lawful order of the Court.

**SO ORDERED** this 15th day of August, 2016.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE